

No. 12,093

IN THE  
United States Court of Appeals  
For the Ninth Circuit

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JOHANNES FREDERICK BECHTEL,	}
vs.	
UNITED STATES OF AMERICA,	
	<i>Appellant,</i>
	<i>Appellee.</i>

BRIEF FOR APPELLEE.

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## Subject Index

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	Page
Statement of the case .....	1
Findings and conclusions as to the common issue.....	2
Appellant's individual trial .....	3
Witnesses called in appellant's behalf .....	12
The issues .....	13
Argument .....	15
Answer to appellant's arguments.....	34
Contention of appellee .....	40
Conclusion .....	41

## Table of Authorities Cited

Cases	Pages
Baumgartner v. U. S., 322 U. S. 665, 64 S. Ct. 1240, 88 L. Ed. 1525 .....	14, 17, 20, 23, 24, 32, 34, 38, 40
Beavers v. U. S., 3 F.(2d) 860 .....	39
Curlez v. U. S., 67 F.(2d) 443 .....	38
Halbert v. U. S., 290 F. 765 .....	39
Johannessen v. U. S., 225 U.S. 227, 32 S.Ct. 613, 56 L.Ed. 1066 .....	16, 17, 18, 36, 38
Klapptrott v. U. S. (decided January 17, 1949), reported in 93 S.Ct. L. Ed. Adv. Opinion 279.....	17, 34
Knauer v. U. S., 328 U.S. 654, 66 S.Ct. 1304, 90 L.Ed. 1195 .....	14, 17, 22, 31, 34, 40, 41
Kuehn v. U. S., 54 F.Supp. 63, 162 F.(2d) 716, cert denied 332 U.S. 837 .....	14, 17, 40
Lott v. Lott, 218 N.W. 447, 174 Miss. 13 .....	39
Luria v. U. S. (N.Y. 1913), 34 S.Ct. 10, 231 U.S. 9, 58 L.Ed. 101, affirming U.S. v. Luria (D.C. 1911), 184 F. 643 .....	18, 19, 37
People v. Curran, 121 N.E. 637, 286 Ill. 302, affirmed 207 Ill. App. 302 .....	38, 39
Schneiderman v. U. S., 320 U.S. 118, 63 S.Ct. 1333, 87 L.Ed. 1796, rehearing denied 64 S.Ct. 24, 320 U.S. 807, 88 L. Ed. 488 .....	14, 17, 20, 23, 32, 34, 40
Schwinn v. U. S., 112 F.(2d) 74 .....	35
Semper v. American Press, 273 S.W. 217 .....	39
Sheffman v. U. S., 289 F. 370 .....	39
Tutun v. U. S., 270 U.S. 568, 46 S.Ct. 425, 70 L.Ed. 738....	19
U. S. v. Aakervik (D.C. Or. 1910), 180 F. 137.....	37
U. S. v. Block, 88 F. (2d) 618, cert. denied 57 S.Ct. 793, 301 U.S. 690, 81 L.Ed. 1347 .....	38
U. S. v. Bruno Holtz, 43 F. Supp. 63 .....	1

# TABLE OF AUTHORITIES CITED

iii

	Pages
U. S. v. Gallucci (D.C. Mass. 1944), 54 F.Supp. 964.....	19
U. S. v. Ginsberg, 243 U.S. 472, 37 S.Ct. 422 .....	18
U. S. v. Graham, 102 F(2d) 436, cert. denied Graham v. U. S., 59 S.Ct. 1041, 307 U.S. 643, 83 L.Ed. 1524, re- hearing denied 60 S.Ct. 68, 308 U.S. 632, 84 L.Ed. 526, cert. denied Heed v. U. S., 59 S.Ct. 1041, 307 U.S. 643, 83 L.Ed. 1524 .....	39
U. S. v. Knauer, 328 U.S. 654, 66 S.Ct. 1304, 90 L.Ed. 1500	37
U. S. v. Knight (D.C.), 291 F. 129 .....	35
U. S. v. Leles (D.C.), 227 F. 189 .....	36
U. S. v. Mansour (D.C. N.Y. 1908), 170 F. 671.....	37
U. S. v. Meyer (D.C. Wash. 1909), 170 F. 983.....	37
U. S. v. Ness, 245 U.S. 319, 38 S.Ct. 118, 62 L.Ed. 321.....	18, 37
U. S. v. Nisbet (D.C. Wash. 1909), 168 F. 1005.....	36
U. S. v. Nopoulos (D.C. Iowa 1915), 225 F. 656.....	37
U. S. v. Norsh (C.C. Mo. 1890), 42 F. 417.....	36
U. S. v. Plaistow (D.C. N.Y. 1910), 189 F. 1006.....	37
U. S. v. Schuchhardt (D.C. Ind. 1943), 48 F.Supp. 876....	36
U. S. v. Siegel, 152 F.(2d) 614 (Conn. 1945), 59 F.Supp. 183, cert. denied 66 S.Ct. 1361, 90 L.Ed. 1264, 328 U.S. 868 .....	19, 37
U. S. v. Simon (C.C. Mass. 1909), 170 F. 680.....	36
U. S. v. Spohrer (C.C. N.Y. 1910), 175 F. 440.....	16, 36
Watkins v. U. S., 104 F.(2d) 465 .....	39

## Statutes

Act of June 9, 1906, Section 4 (34 Stat. 598).....	17
Nationality Act of 1940, Section 338(a) (Title 8 U.S.C.A. 738) .....	17, 19

## Texts

70 Corpus Juris 6175 .....	38
----------------------------	----

## Excerpts From Transcript

Findings and conclusions as to the common issue.....	ii
Findings of fact as to Johannes Frederick Bechtel (No. 22411-G) (Tr. p. 55) .....	xiv



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*Appellee.*

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**BRIEF FOR APPELLEE.**

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**STATEMENT OF THE CASE.**

This is one of seven denaturalization cases involving members of the German-American Bund which were tried in the United States District Court for the Northern District of California and in which the Government obtained judgment against all of the defendants.

The cases were consolidated (*United States v. Bruno Holtz, et al.*, 43 F.Supp. 63) for the trial of the common issues of law and fact as to the un-American and subversive character of the German-American Bund and predecessor organizations, of which all of the defendants were members, reserving to the individual defendants separate trials as to their

separate and individual statements, acts, conduct and membership in, knowledge of the principles and purposes of the German-American Bund and its predecessor organizations and their personal participation in the activities of said organizations, together with their personal endorsement of such principles, aims and activities.

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### **FINDINGS AND CONCLUSIONS AS TO THE COMMON ISSUE.**

After hearing lengthy testimony with respect to the principles, purposes and activities of the German-American Bund and its predecessor organizations, the Court below prepared findings of fact and conclusions of law as to the common issue, which are set forth herein in full in the appendix.

The conclusions of law of the Court below were succinct and to the point and are well worthy of repetition. They are as follows:

- “(1) In carrying out the activities hereinabove described, and in seeking to accomplish its real aims and purposes, the Bund demonstrated itself to be a German Militant ‘Fifth Column’ organization in the United States, antagonistic to the democratic form of government and to the Constitution and laws of the United States, un-American and subversive. One who believes in the National Socialist philosophy and form of government cannot at the same time be loyal to the United States nor attached to the principles of the Constitution and laws of the United States.
- (2) The principles of German National Social-



ism are opposed in all respects to the principles of democracy and to the Constitution and laws of the United States.”

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#### **APPELLANT'S INDIVIDUAL TRIAL.**

Appellant Johannes Frederick Bechtel testified that he was born in Landshup County, Germany, in 1900; that he completed grade school and a practical course in gardening; that he was in the German army from July to December, 1918, and that he never filled any official position under the German or any other government. (R. 105-6.) He migrated to the United States in September, 1925, and had never subsequently returned to Germany. He filed his declaration of intention to become a citizen of the United States in 1927, his petition for naturalization on November 22, 1933, and was naturalized in the Superior Court, Alameda County, on February 23, 1934. (R. 161-162, 364.)

Appellant's wife migrated to the United States in 1923. They were married in 1928 and she has never become a citizen of the United States. (R. 172.)

During the course of the consolidated trial, certain witnesses testified concerning the appellant Bechtel, as follows:

Leopold Peterknecht testified from his membership card (U. S. Ex. 217, consolidated case) that he joined the Friends of New Germany at the time the San Francisco unit was organized in November, 1933. (R.

94, consolidated trial, pages 560-561.) He identified appellant Bechtel as a member of the Bund and the O. D. (Ordnungs Dienst) from "the beginning." (R. 94, consolidated trial, p. 570.)

Witness William J. Punjer testified that he saw appellant Bechtel attending Bund meetings in 1937 or 1938. (R. 94, consolidated trial, p. 730.)

Witness Eloise Gast Atkins (in consolidated trial) identified herself as a former hat check girl at the German Pioneer House in Oakland (consolidated trial, p. 586) and testified that between 1933 and 1939 appellant Bechtel regularly attended Bund meetings there wearing the Bund uniform. (R. 95, consolidated trial, p. 593.)

Witness Severin Winterscheidt identified himself as a former member of the editorial staff of the Bund newspaper. (Consolidated trial, p. 214). He identified a file of copies of that newspaper (consolidated trial, U. S. Ex. 55) item 156 of which dated June 30, 1938, referring to the recent Bund celebration at Dublin Canyon, expresses thanks to "Bund member Bechtel for his tireless work in keeping the swastika burning on the mountain slope as long as possible." (R. 96.)

Government witnesses in the appellant's individual trial, testified as follows:

The deposition of Andreas Peter Jessen was read in evidence. From it, it appears that Jessen first met appellant in 1936, at the time the Concord unit of the Bund was organized. (R. 97.) Witness' deposi-

tion further stated that the appellant came to Concord from Oakland in an automobile with Gottfried Hein, Oakland unit leader, along with four other carloads of Bund members and assisted in organizing the Concord unit (R. 108); that witness subsequently saw appellant at Bund meetings in Oakland and at the Bund celebration at Dublin Canyon; that he had seen appellant in the O. D. uniform, attending Bund and O. D. meetings (R. 102) and that appellant attended the Dublin Canyon celebration in the O. D. uniform (R. 103). Witness' deposition further shows that he had seen appellant in the Bund uniform at an O. D. meeting in Oakland in 1936, along with 23 or 24 other members. (R. 104.)

Government witness Eldon J. Edwords testified that he had been acquainted with appellant since 1934 or 1935 (R. 153); that about 1938, appellant stated the Versailles Treaty and the Jews were the cause of all the trouble in Germany and that he was in favor of the German territorial expansion program "to a certain extent." (R. 154.)

Jeanne Eloise Atkins (identical with Eloise Gast Atkins, referred to in the consolidated trial) testified that she had been hat check girl at the German Pioneer House in Oakland from 1934 to 1938 (R. 189); that she saw appellant Bechtel attending at least 25 Bund meetings during those years, and in the Bund uniform at least one-half of that time; that on an occasion during the early part of 1938, when Herman Schwinn delivered a speech, appellant Bechtel carrying the swastika flag, entered the meeting room with

a procession of Bund members (R. 196). The witness testified that she was not a Bund member herself and never attended the Bund meetings, but saw appellant Bechtel entering the meetings, and often saw him through the window participating in the meetings. (R. 192.)

Witness Rudolf Joseph Schall identified himself as a landscape gardener and an acquaintance of appellant for 10 or 12 years. (R. 199-200.) He testified that appellant frequently stated to him that economic conditions in Germany were excellent and that Germany was justified in attacking Poland. (R. 201.)

Witness Robert Bach testified that he had been acquainted with appellant since 1934; that appellant had stated to him that conditions were better in Germany under Hitler and that the Jews in Germany should be deported to a separate country by themselves. (R. 217-218.) Witness attended the Bechtels' wedding anniversary and saw a large swastika about 3 or 4 feet long on the ceiling there. (R. 216-217.)

Witness Carl W. Bolle testified that he met appellant in 1927 (R. 224); that about 1937 or 1938 appellant began to talk about Hitler and Germany when they were together; that appellant approved of Hitler's program in Germany. (R. 227-229.)

Witness Guenther E. Reinecke testified that he had been a neighbor and acquaintance of appellant since 1926 (R. 249); that appellant in the Bund uniform attended a banquet at the Hotel Oakland in 1935 in honor of the officers and crew of the visiting German

battleship "Karlsruhe," and that about 1934 appellant began to talk about the building program and the good economic conditions in Germany. (R. 250-1-2.)

Witness Henry Koenig testified that he had been acquainted with appellant between 5 and 10 years. (R. 256.) *Witness stated that appellant approved of the Nazi program*, but testified that he had never said that Bechtel told him that the "new order" should be established in the United States. (R. 261-262.) Federal Bureau of Investigation Agent Edward W. Butler testified that witness Koenig had made a sworn statement to him during the first part of 1943, and after reading the statement had initialed certain corrections and thereafter signed same as correct. The statement was introduced in evidence as U. S. Ex. 4 and a portion read into the record as follows:

"I have known Hans Bechtel socially for the past ten or twelve years. About 1935 or 1936 Hans began to talk about the conditions in Germany. He would tell about how much better things were in Germany under the new order there. He complained about poor conditions in the United States and would say things would be better in the United States if the new order was in the United States. Hans approved of the Nazi program. He thought the proper way to do things was the way they were done in Germany." (R. 261.)

Witness Koenig thereafter disclaimed stating that appellant favored the establishment of the "new order" here.



Witness Albert W. Kruse testified that he had been acquainted with appellant since 1933 or 1934; that he had seen him in Bund uniform on two occasions, once in Oakland in 1935 at the celebration in honor of the officers and crew of the German battleship "Karlsruhe" and again in 1937 at a Christmas party given by the Bund at which Gottfried Hein spoke, outlining the general conditions of the youth movement in Germany, and requesting the members and their friends to support a German language and culture school here; that after this speech the appellant requested witness to send his son to that school (R. 267-268); that on or about 1933 or 1934 appellant remarked to the witness that the German people were better off under the Hitler regime than the people were in the United States; that about 1938 or 1939 appellant stated that he would like to "liquidate his property" and return to Germany (R. 270), and that on several occasions appellant tendered to witness to read some German newspaper published in the United States (R. 271).

Witness Arthur Cobbledick testified that appellant was employed as a gardener by his father from 1925 to 1927, and employed by the witness in a similar capacity from 1927 to 1932, and that he had seen appellant about six times since 1932 at which they had any conversation. (R. 274.) On those occasions appellant stated that "the Nazis were more successful in meeting their problems of unemployment than our own Government was at the same time" (R. 275) and

that the troubles in Germany were caused by the Jews there (R. 276).

Witness Edna Bell Holman testified that she became acquainted with the appellant 18 or 19 years ago when he was employed as a gardener by her father, and later by her husband (R. 278); that soon after Hitler came into power in Germany appellant stated to witness that he approved of Hitler's program (R. 279) and that the Jews in this country should be treated as they were in Germany (R. 280); that in 1939 or 1940 appellant garbed in the Bund uniform brought his daughter to witness' home to be left there while he attended a Bund function; that appellant stated that they were saving their money in order to go back to Germany (R. 282), and that after she was subpoenaed as a witness in this case, appellant came to her home to see her (R. 284). Witness further testified that appellant told her that he approved of Hitler's national and international policy in 1941, just prior to the entrance of the United States in the war (R. 285-288); that in 1939 appellant stated that he contemplated making a trip to Germany (R. 289) and that they would remain there if it were practicable (R. 290).

Appellant Bechtel testified that he first heard of the Friends of New Germany in July or August of 1934, and joined about September, 1934 (R. 107); that he signed a regular membership application blank when he joined and duly received his membership card

(R. 108). He remained a member of the Bund until October, 1938 (R. 111), and that during the *first week in 1939 he had a fight with unit leader Hein and resigned from the Bund*, but continued to attend meetings and Bund forums thereafter (R. 122-123).

Bechtel testified that at the time he joined the Bund he did not know that its membership was limited to persons of Aryan blood (R. 116), but did know it was governed by the leadership principle (R. 118).

Appellant further testified that he was familiar with the activities of the F. D. N. D. and the Bund from 1934 until 1939 (R. 123); that he had heard speeches delivered by Herman Schwinn, Fritz Kuhn (R. 124, 125, 126, 127), Henry Lage and Gottfried Karl Hein, all Bund unit leaders (R. 131), but immediately thereafter testified that he had never heard the Nazi blood theory nor the question of lebensraum discussed; that the principles and political theories of the German Government were never mentioned; that only the better economic conditions there were discussed (R. 127-128). Appellant saw many of the German travel films which were shown at Bund meetings. (R. 129.)

Appellant testified that he never believed that National Socialism was a better form of government than democracy, and never heard any speeches to that effect in the Bund, that at the Bund meetings the hall was decorated with swastika and American flags, but he did not recall seeing any banners with the Bund slogan displayed. (R. 134-135.)



Appellant identified himself in a group picture with other Bund members (U. S. Ex. 2, R. 136-139-140), taken at the German Pioneer House in Oakland in 1937, and testified that occasionally the members sang the Horst Wessel song at the meetings, but never "Deutschland uber Alles" (R. 137), and that they usually gave the greeting "Heil" or "Seig Heil" (R. 137-139).

Appellant testified that when the German battleship "Karlsruhe" visited San Francisco in 1935, appellant, together with other Bund members, dressed in their O. D. uniforms and attended a reception for them in the Hotel Oakland. (R. 137.)

Appellant further testified that at the Bund meetings there were always Bund and German literature, magazines and periodicals, including "Mein Kampf," the Bund year book and "Der Schulungsbriefe" (R. 143-146), available for the use of members, some of which he read; that he subscribed to the Bund newspaper during the year 1939.

Appellant testified that when he resigned from the Bund in 1939, he burned up his uniform. (R. 149.)

Appellant, together with other Bund members, attended a Bund convention in Fresno, California, in 1935. (R. 149-150.)

Appellant identified in the year book of the F. D. N. D. (U. S. Ex. 15) a photograph of the review of the O. D. taken in Fresno in July, 1935, at the convention, but did not remember whether he ever possessed a copy of the year book or not. (R. 151-162.)

He testified that in the Bund they honored the American and German flags equally. (R. 170-171.)

Appellant testified that his wife repeatedly attempted to persuade him to leave the Bund because some of her friends objected to it. (R. 173.)

Appellant testified that he attended one Bund meeting in 1939 or 1940, at which a member of the Silver Shirt organization spoke and that some of its literature was available for distribution and that he bought some of it, but that he never attended any of the Hitler birthday celebrations of the Bund. (R. 176.)

Appellant testified that at his tenth wedding anniversary in April, 1938, to which he invited a number of his Bund member friends, a large swastika was fastened on the ceiling in his home. (R. 176-177-178.)

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#### **WITNESSES CALLED IN APPELLANT'S BEHALF.**

These witnesses testified in general that the appellant's reputation in the community was for truth, honesty and integrity. Otherwise their testimony was of a negative character. Exception may be made in the case of Phil S. Gibson, who testified that appellant told him that he had been a member of the Bund from 1934 until about 1938 or 1939, and that on appellant's tenth wedding anniversary celebration the appellant had a large swastika on the ceiling in his house. (R. 309-310.)

Appellant's witness Lou Mitchell Young testified that on May 31, 1941, before she knew that any proceedings had been commenced against appellant, she

went to the local office of the Federal Bureau of Investigation in San Francisco, and told them that appellant, who was then employed by her, was speaking about Hitler; that she thought he was talking too frequently about Hitler and Germany and reported him in order to protect him. (R. 317-318.)

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### THE ISSUES.

The appellant states in his brief that the questions involved are as follows (Br. p. 4) :

- (1) Can a final naturalization judgment rendered by a State Court of competent jurisdiction be nullified by an attack launched in a Federal Court?
- (2) Can a denaturalization judgment be justified by the imputation of a mental reservation of foreign allegiance at the time of naturalization, *nunc pro tunc*, when the mental reservation rests upon evidence which failed to meet the requirements of the "clear, unequivocal and convincing evidence" rule?

However, in his argument he seems to raise the following questions (Br. 28, 29, 32) :

- (1) The District Court lacked jurisdiction over the cause for noncompliance with the statutory condition precedent.
- (2) The District Court lacked jurisdiction over the cause and the complaint fails to state a cause of action cognizable therein.
- (3) The judgment is erroneous because it is based on evidence failing to satisfy the clear and convincing evidence rule.

In the last analysis the real issue raised by appellant is that the evidence in this case does not meet the degree of proof required in a denaturalization proceeding. All other contentions are subordinate to this issue.

In that connection due consideration must be given the opinions in the Supreme Court in the cases of *Schneiderman v. United States*, 320 U.S. 118, 63 S.Ct. 1333; 87 L.Ed. 1796, rehearing denied 64 S.Ct. 24, 320 U.S. 807, 88 L.Ed. 488; *Baumgartner v. United States*, 322 U.S. 665, 64 S.Ct. 1240, 88 L.Ed. 1525; *Knauer v. United States*, 328 U.S. 654, 66 S.Ct. 1304, 90 L.Ed. 1195;

and the recent case of

*Kuehn v. United States*, 54 F.Supp. 63, 162 F. (2d) 716; cert. denied 332 U.S. 837.

It will be noted that the Supreme Court distinguished the case of *Knauer v. United States*, supra, from the cases of *Schneiderman v. United States*, supra, and *Baumgartner v. United States*, supra. It will be further noted that the decision in the case of *Kuehn v. United States*, supra, in the Ninth Circuit, follows the decision in *Knauer v. United States*.

It is the contention of the Government that there is ample evidence to sustain the findings of the District Court. The Court made certain findings as to the aims, purposes and doctrines of the German-American Bund and its predecessor organizations. These are fully set forth in the appendix to this brief.

In its Conclusions of Law based on the Findings of Fact, the Court found that in carrying out the activities set forth in its Findings of Fact (see appendix) and in seeking to accomplish its real aims and purposes, the Bund demonstrated itself to be a German militant "Fifth Column" organization in the United States, antagonistic to the democratic form of government and to the Constitution and laws of the United States, un-American and subversive. The Court held that one who believed in the National Socialist philosophy and form of government, cannot at the same time be loyal to the United States nor attached to the principles of the Constitution and laws of the United States. In addition thereto, the Court made certain specific findings of fact as to appellant's individual case, which findings are set forth in the appendix.

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### ARGUMENT.

Appellee concedes that in a denaturalization proceeding the burden is on the Government to prove its case by clear, unequivocal and convincing evidence. The appellee contends, however, that under the decision of the United States Supreme Court in the case of

*Knauer v. United States*, 328 U.S. 654, 66 S.Ct. 1304, 90 L.Ed. 1195,

and the decision of this Court in the case of

*Kuehn v. United States* (decided July 28, 1947), 162 F.(2d) 716; rehearing denied August 25, 1947; certiorari denied December 8, 1947, 332 U.S. 837,



the appellee has met the test of establishing his case by clear, unequivocal and convincing evidence that said appellant procured the issuance of a certificate of naturalization by fraud.

Let us start with the premise that the granting of citizenship through the process of naturalization is a privilege and not a right. In the case of

*Johannessen v. United States*, 225 U.S. 227, 32 S.Ct. 613, 56 L.Ed. 1066,

at page 240, the Court quoted from the case of *United States v. Spohrer*, 175 Fed. Rep. 440. The language used by Judge Cross in that case regarding the right of an alien to naturalization, is as follows:

“An alien friend is offered under certain conditions the privilege of citizenship. He may accept the offer and become a citizen upon compliance with the prescribed conditions, but not otherwise. His claim is of favor, not of right. He can only become a citizen upon and after strict compliance with the acts of Congress. An applicant for this high privilege is bound, therefore, to conform to the terms upon which alone the right he seeks can be conferred. It is his province, and he is bound, to see that the jurisdictional facts upon which the grant is predicated actually exist, and if they do not, he takes nothing by his paper grant. Fraud cannot be substituted for facts.”

And again, on page 446,

“That the government, especially when thereunto authorized by Congress, has the right to recall whatever of property has been taken from it by fraud, is, in my judgment, well settled, and if

that be true of property, then by analogy and with greater reason it would seem to be true where it has conferred a privilege in answer to the prayer of an ex parte petitioner.”

The Supreme Court makes a distinction between the measure of proof that is necessary to deny a petition for citizenship under Section 4 of the Act of June 29, 1906 (36 Stat. 598) and the degree of proof necessary to cancel a citizenship for fraud under Section 338 (a) of the Nationality Act of 1940.

In the first class of cases the Court placed on the petitioner for citizenship the burden of proving his eligibility therefor. In the second class of cases, the cancelling of a certificate of citizenship secured by fraud placed the burden on the Government.

*Schneiderman v. United States*, supra;

*Baumgartner v. United States*, supra;

*Klapprott v. United States* (decided January 17, 1949, and reported Supreme Court Law Ed. advance opinion 279).

The courts have uniformly held that an alien fraudulently naturalized, should not be permitted to retain the fruit of his fraud, and will cancel a certificate of naturalization fraudulently obtained.

In *Johannessen v. United States*, supra, the Court said, at page 241:

“An alien has no moral or constitutional right to retain the privileges of citizenship if, by false evidence or the like, an imposition has been practiced upon the Court, without which the certificate

of citizenship could not and would not have been issued. As was well said by Chief Justice Parker in *Foster v. Essex Bank*, 16 Mass. 245, 273, 'there is no such thing as a vested right to do wrong.' "

In

*Luria v. United States*, 231 U.S. 9, 34 S.Ct. 10,  
58 L.Ed. 101,

at page 24, the Court quoting from *Johannessen v. United States*, *supra*, said:

"Several contentions questioning the constitutional validity of Section 15 are advanced, but all, save the one next to be mentioned, are sufficiently answered by observing that the section makes no discrimination between the rights of naturalized and native citizens, and does not in any wise affect or disturb rights acquired through lawful naturalization, but only provides for the orderly cancellation, after full notice and hearing, of certificates of naturalization which have been procured fraudulently or illegally. It does not make any act fraudulent or illegal that was honest and legal when done, imposes no penalties, and at most provides for the annulment, by appropriate judicial proceedings, of merely colorable letters of citizenship, to which their possessors never were lawfully entitled."

*U. S. v. Ginsberg*, 243 U.S. 472, 37 S.Ct. 422,  
61 L.Ed. 853;

*Tutun v. United States*, 270 U.S. 568, 46 S.Ct. 425, 70 L.Ed. 738;

*United States v. Ness*, 245 U.S. 319, 8 S.Ct. 118,  
62 L.Ed. 321.



Constitutional rights are not endangered by the provision authorizing cancellation of certificate of one taking up a permanent residence in a foreign country within five years after the issuance of a certificate of citizenship.

*Luria v. U. S.* (N. Y. 1913), 34 S.Ct. 10, 231 U.S. 9, 58 L.Ed. 101, affirming *U. S. v. Luria* (D. C. 1911) 184 Fed. 643;

Section 338 of the Nationality Act of 1940; Title 1, subchapter III, 54 Stat. 1158, Title 8 U.S.C.A. Sec. 738.

This section authorizing the revocation of a certificate of naturalization procured by fraud is constitutional, whether fraud be intrinsic or extrinsic.

*U. S. v. Siegel* (Conn. 1945), 59 F.Supp. 183, 152 F. (2d) 614; cert. denied, 66 S. Ct. 1361, 328 U.S. 868, 90 L.Ed. 1264.

This same section authorizing the revocation of a certificate of naturalization on the ground that it was illegally procured, does not constitute legislative usurpation of judicial power.

*U. S. v. Gallucci* (D.C. Mass. 1944), 54 F.Supp. 964.

The provision for the cancellation of certificates of citizenship under the Act of June 29, 1906, applied not only to certificates issued then, but to all certificates heretofore issued by Court exercising jurisdiction in naturalization proceedings.

In its opinion in the case of

*Schneiderman v. United States*, supra, the Supreme Court began using the words "clear, unequivocal and convincing" as to the degree of proof required for the cancellation of a certificate of naturalization procured by fraud. It was the first case in that Court wherein it was called upon to decide what evidence was necessary to sustain the cancellation of a certificate of naturalization on the ground that at the time of taking his oath of allegiance to the United States, the naturalized alien had made a mental reservation of an allegiance to another sovereign. The Court endeavored in this case to determine the state of mind of the petitioner for certiorari at the time of his taking the oath of allegiance to citizenship of this country, and decided that in such cases the degree of proof would have to be of a nature which it indicated, "clear, unequivocal and convincing." The Court failed to make definite what it regarded as meeting this degree of proof in particular cases.

This case was followed in that Court by that of *Baumgartner v. United States*, supra, wherein the Court reiterated that the degree of proof necessary for the cancellation of a certificate of naturalization under Section 338(a) of the Nationality Act of 1940 was that such proof must be clear, unequivocal and convincing. In this case the Court was also called upon to pass upon the state of mind of the petitioner for certiorari, Baumgartner, at the time of his naturalization. The Court, in commenting on the state of mind of petitioner at the time he took the oath of allegiance, stated (page 677):

“In short, the weakness of the proof as to Baumgartner’s state of mind at the time he took the oath of allegiance can be removed, if at all, only by a presumption that disqualifying views expressed *after naturalization* were accurate representations of his views when he took the oath. The logical validity of such a presumption is at best dubious even were the supporting evidence less rhetorical and more conclusive. Baumgartner was certainly not shown to have been a party Nazi, and *there is only the statement of one witness that Baumgartner had told him that he was a member of the Bund, to hint even remotely that Baumgartner was associated with any group for the systematic agitation of Nazi views or views hostile to this government.* On the contrary Baumgartner’s diary, on which the Government mainly relies reveals that when in 1939 he attended a meeting of the German Vocational League at which the Nazi salute was given, it was apparently his only experience with this group, and he went ‘Since I wanted to see what sort of an organization this Vocational League was,’ ”

and on page 676, the Court said:

“The insufficiency of the evidence to show that Baumgartner did not renounce his allegiance to Germany in 1932 need not be labored. Whatever German political leanings Baumgartner had in 1932, they were Hitler and Hitlerism, certainly not to Weimar Republic. Hitler did not come to power until after Baumgartner forswore his allegiance to the then German nation.”

Owing to the uncertainty as to what constituted this degree of proof the Supreme Court granted a writ

of certiorari to the Circuit Court of Appeals for the Seventh Circuit in the case of

*Knauer v. United States*, 328 U.S. 654, 90 L.Ed. 1195.

In this case the District Court had cancelled a certificate of naturalization and revoked the order admitting Knauer to citizenship on the ground that same had been procured by fraud. The Circuit Court of Appeals for the Seventh Circuit affirmed this opinion. (149 F.(2d) 519.) The Supreme Court granted certiorari.

The facts in this case were as follows: Knauer was a native of Germany. He arrived in this country in 1925 at the age of 30. He had served in the German army during World War I and was decorated. He had studied law and economics in Germany. He settled in Milwaukee, Wisconsin, and conducted an insurance business there. He filed his declaration of intention to become a citizen in 1929 and his petition for naturalization in 1936. He took his oath of allegiance and was admitted to citizenship on April 13, 1937. In 1943 the United States instituted proceedings under Section 338(a) of the Nationality Act of 1940, 54 Stat. 1137, 1158, 8 U.S.C. Sec. 738(a), to cancel his certificate of naturalization on the ground that (1) he had falsely and fraudulently represented in his petition that he was attached to the principles of the Constitution and (2) that he had taken a false oath of allegiance. The District Court was satisfied that Knauer practiced fraud when he obtained his certificate of naturalization. It found that he had not been and was not attached to the principles of the Con-

stitution and that he took a false oath of allegiance. It accordingly entered an order cancelling his certificate and revoking the order admitting him to citizenship.

The Circuit Court of Appeals affirmed the lower court (149 F.(2d) 519). The case was before the United States Supreme Court on a petition for writ of certiorari which was granted to examine that ruling in the light of the decisions of that Court in

*Schneiderman v. United States*, 320 U.S. 118,

and

*Baumgartner v. United States*, 322 U.S. 655.

In the oath of allegiance which Knauer took, he swore that he would "absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to the German Reich"; that he would "support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic"; that he would "bear true faith and allegiance to the same" and that he took "this obligation freely without any mental reservation or purpose of evasion." The first and crucial issue in the case was whether Knauer swore falsely and committed a fraud when he promised under oath of forswear allegiance to the German Reich and to transfer his allegiance to this nation.

The Supreme Court examined the facts to determine whether the United States had carried its burden of proving by "clear, unequivocal and convincing" evidence, which does not leave the issue in doubt, that



the citizen who is sought to be restored to the status of an alien obtained his naturalization illegally.

The Court endeavored to discover the state of mind of Knauer *at the time he swore falsely* on April 13, 1937, the date he took the oath of allegiance to the United States. The Court stated that as in the *Baumgartner* case utterances made in years subsequent to the oath, are not readily to be charged against the state of mind existing when the oath was administered. (322 U.S. 675.) Troubled times and the emotions of the hour may elicit expressions of sympathy for old acquaintances and relatives across the waters. "Forswearing past political allegiance without reservation and full assumption of the obligations of American citizenship are not at all inconsistent with cultural feelings imbedded in childhood and youth." (*Baumgartner v. U.S.*, *supra*, p. 674.)

Human ties are not easily broken. Old social and cultural loyalties may still exist, though basic allegiance is transferred here. The fundamental question is whether the new citizen still takes orders from or owes his allegiance to a foreign chancellory. Far more is required to establish that fact than a showing that social and cultural ties remain. And even political utterances, which might be some evidence of a false oath, if they cluster around the date of naturalization, are more and more unreliable as evidence of the perjurious falsity of the oath the further they are removed from the date of naturalization.

Both the District Court and the Circuit Court of Appeals accepted as the true version of the facts, the following:

As early as 1931, Knauer told a newly arrived immigrant who came from the same town in Germany that, in his opinion, the aim of Hitler and the Nazi party was good, that it would progress, and that it was necessary to have the same party in this country because of the Jews and the Communists. During the same period he told another friend repeatedly that he was opposed to any republican form of government and that Jewish capital was to blame for Germany's downfall. He visited Germany for about six months in 1934 and while there read Hitler's "Mein Kampf." On his return he said, with pride, that he had met Hitler and that he had been offered a post with the German Government at 600 marks per month; that Hitler was the savior of Germany, that Hitler was solving the unemployment problem while this country was suffering from Jewish capitalism; that the Hitler youth organization was an excellent influence on the children of Germany. On occasions in 1936 and 1937, he was explosive in his criticism of those who protested against the practices and policies of Hitler.

The German Winter Relief Fund was an official agency of the German Government for which German consulates solicited money in the United States. In the winter of 1934-1935, Knauer was active in obtaining contributions to the fund and forwarded the money collected to the German consulate in Chicago.

The German-American Bund had a branch in Milwaukee. Its leader was George Froboese, midwestern gauleiter and later national leader. The Bund taught and advocated the Nazi philosophy, the leadership principle, racial superiority of the Germans, the principle of the totalitarian state, Pan-Germanism and of Lebensraum (living space). It looked forward to the day when the Nazi form of government would supplant our form of government. It emphasized that allegiance and devotion to Hitler were superior to any obligation to the United States. Knauer denied that he was a member of the Bund, but the District Court found to the contrary on evidence which was solid and convincing.

Knauer participated in Bund meetings in 1936. In the summer of 1936 he and his family had a tent at the Bund camp. In the fall of 1936 he enrolled his young daughter in the Youth Movement of the Bund, a group organized to instill the Nazi ideology in the minds of children of German blood. They wore uniforms, used the Nazi salute, and were taught songs of allegiance to Hitler. Knauer attended meetings of this group.

The Federation of German-American Societies represented numerous affiliated organizations composed of persons of German descent and sought to coordinate their work. It was the policy of the Bund to infiltrate older German societies. This effort was made as respects the federation. Knauer assisted Froboese and others between 1933 and 1936 in endeavoring to have the swastika displayed at celebrations of



the federation. In 1935, Knauer reprimanded a delegate to the federation for passing out pamphlets opposing the Nazi Government in Germany. At a meeting of the federation in 1935, Knauer moved to have the federation recognize the swastika as the flag of the German Reich. The motion failed to carry. In 1936 the swastika flag was raised at a German day celebration without approval of the federation. A commotion ensued in which Bundists in uniform participated, as a result of which the swastika flag was torn down. At the next meeting of the federation Knauer proposed a vote indicating approval of the showing of the swastika flag. The motion failed and a vote of censure of the chairman was passed. The chairman resigned. Thereupon Froboese and others proposed the formation of the German-American Citizens Alliance to compete with the federation. It was organized early in 1937. The constitution and articles of incorporation of the alliance provided that all of its assets on dissolution were to become the property of a German Government agency for the dissemination of propaganda in foreign countries, the Deutsches Auslands-Institut. The alliance was a front organization for the Bund. It was designed to bring into its ranks persons who were sympathetic with the objectives of the Bund but who did not wish to be known as Bund members.

On February 22, 1937, *less than two months before Knauer took his oath of naturalization*, he was admitted to membership in the alliance and became a member of its executive committee. His first action

as a member was to volunteer the collection of newspaper articles that attacked the alliance, Germany and German-Americans. In 1937, and in the ensuing years Knauer wrote many letters and telegrams to those who criticized the Bund or the German Government. In 1938 Knauer was elected vice-president of the alliance and subsequently presided over most of its meetings. He was the dominant figure in the alliance. In May, 1937, the German consul presented to the alliance the swastika flag which had been torn down at the federation celebration the year before. Not long after his naturalization Knauer urged that the alliance sponsor a solstice ceremony, a solemn rite at which a wooden swastika was burned to symbolize the unity of the German people everywhere. In August, 1937, the alliance refused to participate in an affair sponsored by a group which would not fly the swastika flag. In May, 1938, Knauer at a meeting of the alliance read a leaflet entitled "America, the Garbage Can of the World". In 1939 he arranged for public showings of films distributed by an official German propaganda agency and depicting the glories of Nazism.

There was an intimate cooperation between the alliance and the Bund. The Bund camp was used for alliance affairs and it was available to alliance members. The alliance supported various Bund programs. It supported the Youth Group of the Bund and the Bund's solstice celebration. In 1939 the Youth Group of the Bund held a benefit performance for the alliance. In 1940 it admitted the Youth Group of the Bund at

the request of Forboese. Knauer consistently defended the Bund when it was criticized, when it was denied the use of a park or hall, when its members were arrested or charged with offenses. In spite of the fact that Knauer knew the real aims and purposes of the Bund and was aware of its connection and Froboese's connection with the German Government, he consistently came to its defense. Thus, when a Wisconsin judge freed disturbers of a Bund meeting, he wrote the judge saying that the judge's remarks against the Bund were a "slander of a patriotic American organization." He subscribed to the official Bund newspaper and to a propaganda magazine issued and circulated by an agency of the German Government. He held shares in the holding company of the Bund camp which was started in 1939. A photograph taken at the dedication of the new Bund camp in 1939 shows Knauer among a group of prominent Bund leaders with arm upraised in the Nazi salute. He owned a cottage at the Bund camp. He used the Nazi salute at the beginning and end of his speeches and at the Bund meetings.

In May, 1938, Knauer and Froboese formed the American Protective League with a secret list of members. Knauer was elected a director. A constitution and by-laws were adopted and copies mailed by Knauer and Froboese to Hitler. One Buerk was a German agent operating in this country and later indicted for failing to register as such. In 1939 the German consulate in Chicago supervised the recruiting of skilled workers in that region for return to

Germany for work in German industries. The German consul, Buerk, Froboese and Knauer conducted the recruiting. Knauer participated actively in interviewing candidates. At intervals farewell parties were given by Knauer and Froboese to the returning workers and their families.

Important evidence implicating Knauer in promoting the cause of Hitler in this country was given by a Mrs. Merton. She testified that, prompted solely by patriotic motives, she entered the employ of Froboese in 1938 in order to obtain evidence against the Bund and its membership. The truth of her testimony was vigorously denied by Knauer. But the District Court believed her version as did the Circuit Court of Appeals. The Court felt that her testimony was strongly corroborated and that Knauer's attempt to discredit her testimony did not ring true.

Her testimony may be summarized as follows:

She acted as secretary to Froboese in 1938. During the period of her employment Froboese and Knauer worked closely together on Bund matters. He helped Froboese in the preparation of articles for the Bund newspaper, of speeches, and of Bund correspondence. He helped Froboese prepare resolutions to be offered at the 1938 Bund convention calling for white-gentile-ruled America. When Froboese left the city to attend the convention, he told her to contact Knauer for advice concerning Bund matters. Letters signed by Froboese and Knauer jointly were sent to Hitler and other Nazi officials. One contained a list of 700 German nationals. One was the constitution and by-laws



of the American Protective League which we have already mentioned. One to Hess said they had to lay low for awhile, that there was an investigation on. A birthday greeting to Hitler from Froboese and Knauer closed with the phrase, "In blind obedience we follow you." Knauer told her never to reveal that the alliance and the Bund were linked together. One day she asked Knauer what the Bund was. His reply was that the Bund "was the Fuehrer's grip on American democracy." She reminded Knauer that he was an American citizen. He replied, "That is a good thing to hide behind."

On page 668 of the opinion in the *Knauer* case, the Court made the following statement:

"Moreover, the case against Knauer is not constructed solely from his activities subsequent to April 13, 1937—the date of his naturalization. The evidence prior to his naturalization, that which clusters around that date, and that which follows in the next few years is completely consistent. It conforms to the same pattern. We do not have to guess whether subsequent to naturalization he had a change of heart and threw himself wholeheartedly into a new cause. We have clear, convincing and solid evidence that at all relevant times he was a thoroughgoing Nazi bent on sponsoring Hitler's cause here. And this case, unlike the Baumgartner case, is not complicated by the fact that when the alien took his oath Hitler was not in power. On April 13, 1937, Hitler was in full command. The evidence is most convincing that at that time, as well as later, Knauer's loyalty ran to him, not to this country."

On page 669 of its opinion, the Court distinctly set forth that its view in this case was different than the *Schneiderman* and *Baumgartner* cases. The Court said:

“The district Court properly ruled that membership in the Bund was not in itself sufficient to prove fraud which would warrant revocation of a decree of naturalization. Otherwise, guilt would rest on implication, contrary to the rule of the *Schneiderman* and *Baumgartner* cases. But we have here much more than that. We have a clear course of conduct, of which membership in the Bund was a manifestation, designed to promote the Nazi cause in this country. This is not a case of an underling caught up in the enthusiasm of a movement, driven by ties of blood and old associations to extreme attitudes, and perhaps unaware of the conflict of allegiance implicit in his actions. Knauer is an astute person. He is a leader—the dominating figure in the cause he sponsored, a leading voice in the councils of the Bund, the spokesman in the program for systematic agitation of Nazi views. His activities portray a shrewd, calculating and vigilant promotion of an alien cause. The conclusion seems to us plain that when Knauer forswore allegiance to Hitler and the German Reich he swore falsely.”

Again, on page 670 of the same opinion, the Court stated:

“We need not consider the extent to which a decree of naturalization may constitute a final determination of issues of fact, the establishment of which Congress has made conditions precedent to naturalization. Those facts relate to the past—

to behavior and conduct. But the oath is in a different category. It relates to a state of mind and is a promise of future conduct. It is the final act by which an alien acquires the status of citizen. It requires forswearing of allegiance in good faith and with no mental reservations. The oath being the final step, no evidence is heard at that time. It comes after the matters in issue have been resolved in favor of the applicant for citizenship. Hence no opportunity exists for the examiner or the judge to determine if what the new citizen swore was true was in fact false. Hence, the issue of fraud in the oath cannot become *res judicata* in the decree sought to be set aside. For fraud in the oath was not in issue in the proceedings and neither was adjudicated nor could have been adjudicated."

"Moreover, when an alien takes the oath with reservations or does not in good faith forswear loyalty and allegiance to the old country, the decree of naturalization is obtained by deceit. The proceeding itself is then founded on fraud. A fraud is perpetuated on the naturalization court."

And, on page 674 of the same opinion, the Court said:

"We adhere to the prior rulings of this Court that Congress may provide for the cancellation of certificates of naturalization on the ground of fraud in their procurement and thus protect the courts and the nation against practices of aliens who by deceitful methods obtain the cherished status of citizenship here, the better to serve a foreign master."

Recently, in the case of

*Klapptropp v. United States* (decided by the Supreme Court on January 17, 1949), reported in 93 S.Ct. Law. Ed. Advance Opinion 279,

the Court reiterated its statement in the *Scheiderman* and *Baumgartner* cases, that "clear, unequivocal and convincing" evidence was necessary to deprive a naturalized citizen of his citizenship.

It seems clear from the decision of the Supreme Court that mere membership in an organization, such as the Bund, per se is not sufficient cause for the cancellation of a certificate of citizenship.

*Schneidermann v. United States*, supra;

*Baumgartner v. United States*, supra;

*Knauer v. United States*, supra;

*Klapptropp v. United States*, supra.

The Court defined what is meant by "clear, unequivocal and convincing" evidence of fraud. In so doing it provided a yardstick of measure as to when "clear, unequivocal and convincing" evidence of fraud has been established in a denaturalization case. For this reason these facts in the *Knauer* case have been heretofore set forth at length.

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#### ANSWER TO APPELLANT'S ARGUMENTS.

In the first point made in his argument (Br. p. 28) appellant, in substance, says that the complaint in this action should have been supported by "an affidavit



showing good cause" for the filing of the complaint as provided by Title 8 USCA Section 738(a).

This Court seems to have fully passed on this issue in the case of

*Schwinn v. U. S.*, 112 F.(2d) 74, at page 75, wherein this Court stated:

"\* \* \* The portion of Section 405, Title U.S.C.A. which refers to the affidavit reads as follows: 'It shall be the duty of the United States district attorneys for the respective districts \* \* \* upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured \* \* \*'

"This affidavit is not jurisdictional, but merely makes it the duty of the district attorney to proceed. The district attorney could institute proceedings of this character sua sponte whenever he had reason to believe that the law had been violated in the respect alleged in the petition."

In this case the opinion of this Court was affirmed (1941), 61 S. Ct. 70, 311 U.S. 616, 85 L.Ed. 390.

Continuing in its opinion in the *Schwinn* case, this Court further said (page 76):

"The case of *United States v. Knight*, D.C., 291 F. 129, was a proceeding under the same statute and no affidavit to the district attorney upon which to base the case was proved—in this respect

exactly as here. The Court referred to *United States v. Leles*, D.C., 227 F. 189, 190, and said (page 130 of 291 F.), 'The statute is inclusive, not exclusive, and, like statutes for actions or complaints by private prosecutors, does not preclude public prosecutors from proceeding of their own motion to enforce the laws.' "

See, also,

*U. S. v. Schuchhardt* (D.C. Ind. 1943), 48 F. Supp. 876.

Answering No. II of appellant's argument on page 29 of his brief, wherein he states that there is no jurisdiction for cancellation of a State Court naturalization in a Federal Court, we list the following cases:

In

*Johannessen v. U. S.*, 225 U.S. 227 (page 240), the Supreme Court, quoting from the case of *United States v. Norsch*, 42 F.Rep. 417, said:

"It was declared that the Government could sue in a Federal Court for the cancellation of a certificate that had been procured by fraud in a State Court, \* \* \*"

There is a large number of cases holding that Federal Courts have jurisdiction to cancel naturalizations occurring in the State Courts for fraud and illegality.

See:

*U. S. v. Norsch* (C.C. Mo. 1890), 42 F. 417;  
*U. S. v. Simon* (C.C. Mass. 1909), 170 F. 680;  
*U. S. v. Spohrer* (C.C. N. J. 1910), 175 F. 440;  
*U. S. v. Nisbet* (D.C. Wash. 1909), 168 F. 1005;

*U. S. v. Meyer* (D.C. Wash. 1909), 170 F. 983;  
*U. S. v. Aakervik* (D.C. Ore. 1910), 180 F. 137;  
*U. S. v. Plaistow* (D.C. N. Y. 1910), 189 F.  
 1006;

*U. S. v. Nopoulos* (D.C. Iowa 1915), 225 F. 656;  
*U. S. v. Mansour* (D.C. N. Y. 1908), 170 F. 671;  
*Luria v. U. S.* (N. Y. 1913), 34 S.Ct. 10, 231  
 U.S. 9, 58 L.Ed. 101, affirming *U. S. v. Luria*  
 (D.C. 1911), 184 F. 643.

Answering argument of appellant wherein he contends that final judgment of the California State Court cannot be subjected to attack for intrinsic fraud in the judgment in the State Court (Br. p. 30), the Court's attention is invited to the case of

*U. S. v. Siegel*, 152 F.(2d) 614,

at page 615, wherein the Court stated:

"Although in *Schneiderman v. United States*, 320 U.S. 118, at page 124, 63 S.Ct. 1333, 87 L.Ed. 1796, the question of constitutionality was put aside as unnecessary for decision, a reading of the later *Baumgartner* case, *Baumgartner v. United States*, 322 U.S. 665, 64 S.Ct. 1240, 88 L.Ed. 1525, convinces us, as it did the district judge, that the statutory authorization to revoke a judgment of naturalization procured by fraud is valid, whether the fraud be intrinsic or extrinsic."

Holding to the same effect are the cases of

*United States v. Knauer*, 328 U.S. 654, 66 S.Ct. 1304, 90 L.Ed. 1500;

*United States v. Ness*, 245 U.S. 319, 38 S.Ct. 118, 62 L.Ed. 321;

*Baumgartner v. United States*, supra;  
*Johannessen v. United States*, supra.

It is belieevd that the third argument of appellant, set forth on page 32 of his brief, wherein he states that the judgment is erroneous, because it is based upon evidence failing to satisfy the clear and convincing evidence rule, has been heretofore fully answered in our brief.

Appellant on pages 21 and 22 of his brief sets forth Specification of Errors of Law. In the Specification of Errors in the Admission and Rejection of Evidence on page 23 of his brief, among other specification of errors appellant states that the trial Court erred in permitting appellant to be examined as an adverse witness over his objection that the appellee's interrogatories failed to specify he was to be called and the testimony expected to be elicited from him. (R. 105.)

In general, a party does not have a right to cross-examine a witness produced by him for the purpose of impeaching the witness. When, however, the witness is hostile, it is within the discretion of the Court to allow the party calling the witness to do the examining.

70 Corpus Juris 6175;

*People v. Curran*, 121 N.E. 637; 286 Ill. 302,  
 affirmed 207 Ill. App. 302;

*Curlez v. U. S.*, 67 F.(2d) 443;

*U. S. v. Block*, 88 F.(2d) 618; certiorari denied  
 57 S.Ct. 793; 301 U.S. 690, 81 L.Ed. 1347.

In a prosecution for conspiracy it was proper for the Court to permit the State's attorney to examine

witnesses called by him where their answers were evasive and at variance with their statements before the grand jury and the State's attorney.

*People v. Curran*, supra.

Plaintiff's witness was an employee of defendant and exhibited considerable hostility to plaintiff in giving his testimony, and it was not an abuse of discretion to permit him to be cross-examined by plaintiff.

*Semper v. American Press*, 273 S.W. 217.

A proponent of a will, who was forced to call a subscribing witness, impeaching recitals in the affidavit clause, should not be restricted in cross-examination on the theory that such a witness is proponent's.

*Lott v. Lott*, 218 N.W. 447, 174 Minn. 13.

See, also,

*United States v. Graham*, 102 F.(2d), 436 certiorari denied *Graham v. U. S.*, 59 S.Ct. 1041, 307 U.S. 643, 83 L.Ed. 1524, rehearing denied 60 S.Ct. 68; 308 U.S. 632, 84 L.Ed. 526. Certiorari denied *Heed v. U. S.*, 59 S.Ct. 1041, 307 U.S. 643, 83 L.Ed. 1524.

*Sheffman v. U. S.*, 289 F. 370;

*Halbert v. U. S.*, 290 F. 765;

*Beavers v. U. S.*, 3 F.(2d) 860;

*Watkins v. U. S.*, 104 F.(2d) 465.

Appellee feels that the same comment covers specifications of errors No. VI on page 24 of Appellant's Brief.



It is believed that appellant's specification of errors IV and V, appearing on page 23 of his brief, are fully answered by the opinion of the Supreme Court in the cases of

*Schneiderman v. U. S.*, supra;

*Baumgartner v. U. S.*, supra;

*Knauer v. U. S.*, supra;

*Kuehn v. U. S.*, supra.

Counsel does not cite any authorities to sustain his position regarding specification of errors No. II wherein he states that the Court erred in permitting the appellant to be examined as to statements made by him to an army board. (R. 163-4.)

As to specification of errors No. III, appellant has offered no authority to sustain his position and the questions asked of appellant relative to conversations with his wife were of no evidentiary importance, the questions being as to whether or not his wife objected to his activities in the Bund and whether or not she tried to persuade him to give them up. (R. 172.)

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#### **CONTENTION OF APPELLEE.**

It is the contention of appellee that we have these three factors present in this case:

FIRST: That the appellant was a member of the German-American Bund and other German allied propaganda organizations;

SECOND: That he knew the purposes, objects and aims of these organizations and subscribed to same;

THIRD: That his activities did not stop with mere membership and knowledge of the purposes of the organizations, but that, so far as he was personally able, he showed an endorsement of the various practices and objects by his actions and words.

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### CONCLUSION.

As it appears that there was ample evidence presented to the Court to sustain the Findings of Fact and Conclusions of Law and that the facts in this case are somewhat analogous to those in the case of *Knauer v. United States*, supra, it is respectfully urged that the decision of the Court below should be affirmed.

Dated, San Francisco, California,  
April 1, 1949.

Respectfully submitted,

FRANK J. HENNESSY,

United States Attorney,

EDGAR R. BONSALE,

Assistant United States Attorney,

*Attorneys for Appellee.*

(Appendix Follows.)









## Appendix

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In Section 4, Act of June 29, 1906 (34 Stat. 598) it is provided:

“It shall be made to appear to the satisfaction of the Court admitting any alien to citizenship that immediately preceding the date of his application, he has resided continuously within the United States 5 years at least, and within the state or territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence and occupation of each witness shall be set forth in the record.”

Section 338(a) of the Nationality Act of 1940 (Title 8 U.S.C.A. 738) provides:

“It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 701 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and cancelling the certificate of naturalization on the ground of fraud or on the ground



## Appendix

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that such order and certificate of naturalization were illegally procured.

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## FINDINGS AND CONCLUSIONS AS TO THE COMMON ISSUE.

### I.

In or about October, 1924, there was organized in Chicago, Illinois, the "Free Society of Teutonia" which, by subsequent changes of name, became known in 1926 as the "National Socialist Society of Teutonia", in 1932 as the "Friends of the Hitler Movement", in June, 1933 as the "Bund Freunde des Neuen Deutschland" or the "Bund Friends of the New Germany", and in March, 1936 as the "Amerika-Deutscher Volksbund" or "German-American Bund". The term "the Bund" is used to designate the organization at all times from and after June 30, 1933.)

### II.

On or about June, 1933, local units of the National Socialist German Workers Party (commonly known as the "Nazi Party" or the "N. S. D. A. P.") then and theretofore existing in the United States ostensibly dissolved and associated themselves with and became amalgamated in the Bund.

### III.

The Bund was active openly in the United States and operated until about the date of the declaration of war on December 8, 1941.

## IV.

The Bund was an incorporated membership association in which membership was limited by the rules of the organization to persons of "Aryan" descent (as defined by the Nazi Party), free from Negro or Jewish blood. The membership was made up almost entirely of persons of German descent.

## V.

The Bund, and each of the organizations mentioned in Paragraphs I and II hereinabove, was organized and conducted for German National Socialistic purposes, and was connected with and controlled in thought and action by the Nazi Party in Germany. In its organization and in its activities the Bund modeled itself upon and imitated the Nazi Party.

## VI.

The constitution of the Bund as adopted in or about 1935, and as from time to time revised and published was false and misleading and designed to blind the American public to the true aims and purposes of the organization, which was dedicated to the accomplishment of the aims and purposes in the United States of German National Socialism, as expounded by Adolph Hitler and the Nazi Party.

## VII.

The Bund stood for and taught the proposition that all people of German extraction were members of the German "Volk"; that no member of the "Volk" could ever be absorbed in or by any other nationality



or race; and that every member of the "Volk", regardless of what citizenship he might have acquired or derived in any other country, owed allegiance to Germany. That proposition is basic in the philosophy of the Nazi Party.

## VIII.

The Bund stood for and taught that the German "Volk" was supreme over all other nationalities or races. That proposition is basic in the philosophy of the Nazi Party.

## IX.

The Bund was conducted in accordance with the so-called "leadership principle", under which unquestioned obedience is owed to the leader. The leadership principle is a basic tenet of German National Socialism and is entirely inconsistent and at odds with the democratic concept of government. The Bund taught that under the leadership principle all persons of German extraction, as members of the German "Volk", owed obedience to the leader of the German nation who, from and after January, 1933, was Adolf Hitler.

## X.

The Bund sought to instill and foster in United States citizens of German extraction a loyalty and allegiance to the "homeland" or "Vaterland"—Germany—thus to create in such citizenry a divided loyalty inconsistent with full and undivided allegiance to the United States owed by a citizen thereof.

## XI.

The Bund taught that all people of "German" blood in the United States, regardless of their citizenship must serve the interests of Germany first, even though those interests might conflict with the interests of the United States.

## XII.

The Bund attempted to create dissension among the people of the United States by urging discrimination against certain persons and groups of persons, for reasons of race, color or creed.

## XIII.

At various times the Bund, or its predecessor, organizations named in Paragraph I hereinabove, published and distributed the following newspapers: "Das Neue Deutschland", "Deutsche Zeitung", "Deutscher Beobachter", "Deutscher Weckruf und Beobachter", and "Deutscher Weckruf und Beobachter and Free American". Each of such newspapers was the official organ of the organization at the time of its publication. Each of the newspapers was designed and used to disseminate the philosophy and precepts of German National Socialism in the United States, to foster in the readers thereof an allegiance to Germany and to the Nazi Party, and to incite in the readers thereof a contempt for democratic institutions and the government of the United States. The contents of such newspapers were Nazi-inspired, and in a large part the source material of the contents was secured by

the Bund or its predecessor organizations from propaganda agencies in Germany controlled by the Nazi Party.

#### XIV.

The Bund received Nazi propaganda material from such agencies as the Rassen Politische Auslands Korrespondentz (R. A. K.), Dienst Aus Deutschland, the Fichtebund, Volksbund fuer des Deutschtum im Ausland (V. D. A.), and Deutscher Auslands Institut (D. A. I.). Such material was disseminated by the Bund through the medium of newspapers (see Paragraph XIII, supra), and through books, pamphlets and leaflets distributed by Bund members at headquarters, Bund camps and elsewhere.

#### XV.

The Bund conducted a school at which officers and selected members were given special training in public speaking and in the methods and means of disseminating the principles of National Socialism. Such speakers were thereafter sent to Bund meetings and other gatherings to expound and advocate the philosophy of German National Socialism.

#### XVI.

The Bund sponsored and arranged speaking tours for members of the Nazi Party sent to the United States to address Bund meetings and other gatherings on the philosophy of German National Socialism.

## XVII.

The Bund conducted camps at which Nazi flags and paraphernalia were exhibited; Nazi literature and propaganda were displayed, distributed and sold; speakers expounded the theories of German National Socialism; and at which both adults and youths were taught the principles of Nazi-ism and exhorted to be loyal to and preserve in their minds and lives the theories and philosophy of Germany over and above the theories and philosophies of the United States.

## XVIII.

The Bund sought to and did instill in its members an allegiance to Germany and to the Nazi Party and its leaders through the exhibition and use of such Nazi paraphernalia as the swastika, through the singing of such Nazi songs as the "Horst Wessel", and through the display and repetition of such slogans as "Ein Volk" (one people—the German people), "Ein Reich" (one country—Germany), "Ein Fuehrer" (one leader—Adolph Hitler).

## XIX.

Within the Bund there existed a uniformed group known as the "Ordnungs Dienst". The "Ordnungs Dienst" was patterned after the Nazi Storm Troopers of Germany. It was a militant body of selected Bund members trained in military techniques and designed to serve as a nucleus for a future and larger military organization if and when the aims of the Bund were accomplished in the United States. It was used by

the Bund to spread the philosophies of the Bund and of German National Socialism, and to distribute literature and propaganda of German origin and thought.

## XX.

The Bund organized and conducted a Youth Group ("Jungenschaft") which was modeled upon the Hitler Youth in Germany. Members of the Youth Group were taught the precepts of the Nazi philosophy; they were instructed in the German language to the exclusion of English; they were taught to keep Germany, German leaders, and German ideas foremost in their minds and to be loyal to them; they were taught to be German rather than American.

## XXI.

From and after 1935 there was a group within the Bund known as the "Prospective Citizens League". Membership in said league was made up of German nationals who had filed declarations of intention to become citizens of the United States, but whose citizenship had not been completed. This division of the Bund was created for the purposes of organizing and keeping German nationals within the Bund, in order to prevent assimilation of such German nationals in American life, and to foster in such German nationals an adherence to the Nazi cause and to German National Socialism as represented by the Bund in this country. Members of the Prospective Citizens League were, in fact, members of the Bund, engaged in all activities of the Bund, and enjoyed all the rights and privileges pertaining to membership in the Bund.



There was no distinction between a Bund "member" and a member of the Prospective Citizens League.

## XXII.

There was within the Bund a group known as "Forderers" or "Sympathizers". That designation was devised to conceal the affiliations of certain persons within the Bund. "Forderers" or "Sympathizers" were, in fact, members of the Bund, engaged in all the activities of the Bund, and in Bund membership. There was no distinction between a "Forderer" or "Sympathizer" and a Bund "member".

## XXIII.

Throughout the life of the Friends of the New Germany and the German-American Bund, these organizations maintained a thorough program for acquainting and indoctrinating its members with the National Socialism doctrines and objectives for which it stood. This took the form of the Bund newspaper to which members were urged to subscribe, Bund commands issued and read to the members, pamphlets and documents distributed among the members, speakers from Germany and others sent out by Bund headquarters, national and district conventions and regional meetings, celebration and observation of Hitler's birthday and other German holidays, instructions given by local leaders to the Bund membership, the order of procedure with the display of Nazi flags and banners, and the use of National Socialistic slogans.

The Bund's program and doctrines were irreconcilable with allegiance to the United States and with the principles of the United States Constitution. Persons acquainted with the Bund's program and doctrines and who continued to participate in the Bund were acting in a manner inconsistent with attachment to the principles of the United States Constitution and with loyalty to the United States.

Consequently, a strong presumption arises that the officers and members who were active participants in the Bund's program over a considerable period of time could not escape having knowledge of the Bund's National Socialistic program and its connection with and control by the Nazi Party and the German Government.

#### XXIV.

The aims and purposes of the Bund, as promulgated and carried out by the San Francisco, Oakland, and Concord units, were identical with the aims and purposes of the national organization. Among other things, these units endeavored to create sympathy amongst the people of German extraction for the New Germany and to counteract the Jewish boycott on German-made goods.

#### XXV.

Bund commands were received from national headquarters by these local units and read to the members. These commands instructed the units concerning the best manner by which the membership could be of

assistance to Germany, advised the units in all matters relative to National Socialism, and directed the units in the conduct of their affairs.

## XXVI.

These local units of the Bund and of the Friends of the New Germany held membership meetings and social meetings. The membership meetings were for members only. Meetings of the units closed by singing the "Horst Wessel" song. The Nazi salute was the official salute of the units. Their official flag was the swastika. They also used the American flag. Contributions were solicited from the members for the "Fighting Fund" to defray legal expenses of Fritz Kuhn's trial in New York City. Members contributed to the German Winter Relief. Dues were paid and a part of same was sent to Bund headquarters in New York. Some members received both the 1937 and 1938 editions of the Bund Year Book. Members were urged to purchase and subscribe to the Bund newspaper, and many did so.

## XXVII.

National Bund officials and prominent Nazis delivered speeches to the local units. Some of the speakers were Fritz Kuhn, Wilhelm Kunze and Herman Schwinn, West Coast Leader. These speeches concerned the New Germany, conditions therein, and the functions of the Bund in its relation to that country.

## XXVIII.

Not only did these units at their membership meetings advocate the principles of National Socialism, but even at their social meetings they grasped the opportunity further to instruct their members along these lines. At these social evenings motion pictures depicted the progress of the New Germany under Hitler, and travelogues were shown. At such meetings propaganda literature, some of which was printed in Germany, was available for distribution and sale. Speeches by Hitler, Goebbels, and other prominent Nazi officials, as well as the Bund newspaper, were on sale.

## XXIX.

The local units had a uniformed group, the Ordnungs Dienst, or the O.D. Their uniforms consisted of a cap, white shirt (at one time a gray shirt), black tie, Sam Browne belt, breeches, and a white and red arm band with the swastika insignia thereon. The O.D. acted as a color guard and displayed both the American flag and the Bund flag which bore the swastika emblem. The uniforms were similar to those worn by the Storm Troopers in Germany, and the purpose of the O.D. was principally to protect members from attack during meetings, to act as ushers, and to distribute German pamphlets and literature.

## XXX.

The local units sent representatives to the various district and national Bund conventions. In Germany the Bund in 1936 paraded in uniform through the

streets of Berlin to the Reich Chancellory. This group presented a "Golden Book" to Hitler, in which were inscribed the names of the individuals who contributed a sum of money which was also presented to Hitler at that time. Some members of the local units contributed to this fund.

### XXXI.

In carrying out the activities hereinabove described, and seeking to accomplish their real aims and purposes, the local units of the Bund demonstrated themselves to be militant Nazi organizations, antagonistic to the democratic form of government and to the Constitution and laws of the United States, and that they were un-American and subversive.

### CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Court draws the following Conclusions of Law:

#### I.

In carrying out the activities hereinabove described, and in seeking to accomplish its real aims and purposes, the Bund demonstrated itself to be a German Militant "Fifth Column" organization in the United States, antagonistic to the democratic form of government and to the Constitution and laws of the United States un-American and subversive. One who believes in the National Socialist philosophy and form of government cannot at the same time be loyal to the United States nor attached to the principles of the Constitution and laws of the United States.



## II.

The principles of German National Socialism are opposed in all respects to the principles of democracy and to the Constitution and laws of the United States.

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**FINDINGS OF FACT AS TO JOHANNES FREDERICK  
BECHTEL (No. 22411-G) (Tr. p. 55).**

## I.

That the defendant, Johannes Frederick Bechtel, was at the time of the filing of this action a resident of the City of Oakland, County of Alameda, State of California, and within the jurisdiction of this Court.

## II.

That the defendant was born in Landeshut County, Germany, on May 24, 1900; came to the United States on September 23, 1925; filed his Declaration of Intention to become a citizen of the United States in the Superior Court of the State of California in and for the County of Alameda on April 29, 1927, and thereafter his Petition for Citizenship therein on November 22, 1933, and thereafter, with two witnesses to said Declaration and Petition, was examined by the United States Naturalization Examiner in Oakland, California, thereon; thereafter, by an order of said Court, defendant was admitted to become a citizen of the United States on February 23, 1934, at the conclusion of an open hearing in said Court on said petition at

which he and his two witnesses were examined by said Court and W. J. Kane, United States Naturalization Examiner, and testified thereon, and thereupon took the oath of allegiance to the United States; and, by virtue of said Order of said Court, Certificate of Naturalization No. 3802606 was issued to defendant, who now claims citizenship thereunder.

### III.

That the defendant joined the F.D.N.D. about September 1934, and continued as a member of that organization when the name was changed to G.A.B. in 1936, and thereafter he attended meetings and gatherings of that organization up until and throughout the year 1938 and into 1939. The defendant attended Bund Forums, and subscribed to the "Weckruf and Beobachter" in 1939 which he read for a period of at least one year.

### IV.

That during the period of defendant's membership in the F.D.N.D. and G.A.B. he was on numerous occasions clothed in the uniform of the O.D., attended meetings of the O.D., wore the swastika arm band of such uniformed group, and assisted in the various activities of the organizations such as marching, carrying the swastika banner, and keeping the fire from spreading when a large swastika was burned on a hillside in Dublin Canyon at a picnic held by the G.A.B. in the year 1938.

## V.

That at numerous meetings and functions of such organizations attended by the defendant, he engaged in giving the "Heil" or "Sieg Heil" salute and in the singing of the "Horst Wessel" song.

## VI.

That the defendant went with Gottfried Karl Hein, local Bundesfuehrer, and others to Concord, Contra Costa County, California, in August, 1936, at which time the Concord unit of the F.D.N.D. was organized.

## VII.

That in May 1938, in California Hall, the defendant attended the Western District Convention (Gautag West) of the G.A.B. which was addressed by Herman Schwinn, Western District Leader of the G.A.B., and which was attended by Fritz Kuhn, National Leader, who was then under indictment by the Federal Government in New York, and by Wilhelm Kunze, treasurer of the National Office of the G.A.B.

## VIII.

That between the years 1934 and 1939 defendant stated to various persons that he approved of Hitler's economic and social policies in Germany and approved of his treatment of the Jews in Germany, and also stated that he desired and intended to return to Germany.

## IX.

That on December 14, 1942, defendant stated before a board of United States army officers, sitting as an

Individual Exclusion Hearing Board, that he honored the swastika flag equally with the American flag.

### X.

That the defendant knew and understood the leadership principle as enunciated and subscribed to by the leaders and members of the F.D.N.D. and G.A.B.

### XI.

That the defendant burned his Bund uniform sometime about the year 1939, and knew that Gottfried Karl Hein and Fred Kuehn also burned their uniforms.

### XII.

That on defendant's tenth wedding anniversary on April 24, 1938, he gave a party at his home, at which time he had displayed on the ceiling of one of the rooms a large swastika flag. This party was attended by Gottfried Karl Hein, George Balke, and other members of the G.A.B.

### XIII.

That the defendant ceased attending meetings of the G.A.B. because of personal disagreements with Gottfried Karl Hein, and not because of a disagreement with the policies and ideologies of the G.A.B. itself.

### XIV.

That on the date of defendant's petition for naturalization, at the time of his naturalization, and at all times subsequently, the defendant's allegiance has

been to Germany rather than to the United States, and his attachment has been to National Socialism rather than to the principles of the United States Constitution. His lack of allegiance to the United States and his lack of attachment to the principles of the Constitution have not changed or varied in the interval since his naturalization, and his attitude in these respects was the same when he was naturalized as in subsequent years up to the date of the trial.

## XV.

That the defendant was acquainted with the National Socialistic character and connections of the Bund, as set out in the Findings of Fact in the consolidated case regarding the German-American Bund, and he was in sympathy and in agreement with them.

## XVI.

That the sworn oaths and statements of the defendant in his Petition for Naturalization and in his oath of allegiance at the date of naturalization, as set forth in the complaint were then and there false, fraudulent and illegal in that the defendant, at the time of taking said oaths, did not in fact absolutely and entirely renounce and abjure all allegiance and fidelity to Germany and the German Reich, but in fact intended to and did secretly reserve and retain allegiance and fidelity to Germany and the German Reich; nor did the defendant then and there intend to support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic,



but in fact the said defendant then and there secretly reserved his intention not to support and defend the Constitution and laws of the United States against Germany and the German Reich should they become enemies of the United States of America; nor did the defendant at the time of taking said oaths intend to bear true faith and allegiance to the United States of America, but in fact secretly reserved and retained his intention not to bear true faith and allegiance to the United States of America. That by taking said oaths falsely, with the secret mental reservations and intentions as aforesaid, the defendant deceived the United States, its officers and agents, and the said Naturalization Court at the date of admission to citizenship in order that said defendant might obtain the rights, privileges and protection of citizenship in the United States of America.

## XVII.

The Findings of Fact with respect to the consolidated common issue hereinabove set forth are incorporated herein and made a part hereof by reference.

## CONCLUSIONS OF LAW

From the foregoing Findings of Fact the Court concludes as matters of law:

### I.

That the defendant resides within the jurisdiction of this Court, and the Court has jurisdiction over the person of the defendant and of the subject matter of this action.

## II.

That the Certificate of Naturalization, granted as aforesaid, was illegally and fraudulently procured by the said defendant, and should be revoked, set aside and canceled.

## III.

The Conclusions of Law with respect to the consolidated common issues hereinabove set forth are incorporated herein and made a part hereof by reference.

The foregoing Findings of Fact and Conclusions of Law as to each of the defendants, while included in one document and entitled in all the cases jointly, are separate and distinct as to each of the defendants, and are deemed by the Court to have the same force and effect as if each of said Findings as to each defendant were set forth in separate documents, separately captioned.

Let it further appear of record that the Findings as to each individual defendant are in no wise based upon the Findings as to any other individual defendant, except that the Findings as to the consolidated issues apply by incorporation, as hereinbefore set forth, to the case of each individual defendant.

Dated: March 31, 1944.

/s/ LOUIS E. GOODMAN,

*United States District Judge.*

(Endorsed) Filed March 31, 1948.

C. W. CALBREATH, *Clerk.*

**ORDER CONSOLIDATING CERTAIN NATURALIZATION CASES FOR THE PURPOSE OF A JOINT TRIAL ON THE COMMON QUESTION OF FACT AND LAW WITH REFERENCE TO THE ISSUES INVOLVING THE GERMAN-AMERICAN BUND, ITS AFFILIATES AND PREDECESSORS. (Tr. p. 6.)**

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room hereof, in the City and County of San Francisco, on Monday, the 31st day of May, in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Louis E. Goodman, District Judge.

Civ. No. 22,398-G, United States v. Bruno Holtz;

Civ. No. 22,426-R, United States v. Frank Joseph Andemahr;

Civ. No. 22,508-R, United States v. Ernst Arthur George Blake, alias;

Civ. No. 22,536-R, United States v. Adolph Emil Becker, alias;

Civ. No. 22,411-S, United States v. Johannes Frederick Bechtel;

Civ. No. 22,526-G, United States v. Karl Joseph Beyerle, alias;

Civ. No. 22,405-R, United States v. Herman Alfred Bohme;

Civ. No. 22,552-R, United States v. Fred Bernard Christophel, alias;

Civ. No. 22,542-G, United States v. Ernest John Dittmer;

Civ. No. 22,541-S, United States v. Margareth Ida Dittmer;

Civ. No. 22,515-R, United States v. Otto Fuerst, alias;

Civ. No. 22,556-R, United States v. Joseph Gerhart, alias;

Civ. No. 22,419-S, United States v. Gottfried Karl Hein;

Civ. No. 22,516-G, United States v. Andreas Peter Jessen, alias;

Civ. No. 22,475-R, United States v. John Jacob Kemnitz, alias;

Civ. No. 22,507-G, United States v. Friedrich Wilhelm Kuehn, alias;

Civ. No. 22,485-R, United States v. Max Kummerling;

Civ. No. 22,409-S, United States v. Herbert Landes;

Civ. No. 22,537-S, United States v. Christian Wilhelm Letsch, alias;

Civ. No. 22,519-R, United States v. Kurt Max Frederick Nitz;

Civ. No. 22,404-G, United States v. George Orde-  
mann;

Civ. No. 22,525-S, United States v. Adolf Friederick Rampendahl, alias;

Civ. No. 22,492-R, United States v. Karl Theodor Stautz;

Civ. No. 22,557-S, United States v. Wilhelm Albert Ungerfrohren.

After hearing Frank H. Patton, Esq., Special Assistant to the Attorney General, it is Ordered, that the motion for an order consolidating the twenty-four above-entitled civil actions for the purpose of a joint trial on the common question of fact and law with reference to the issues involving the German-American Bund, its affiliates and predecessors, there being no objection filed by any of said defendants, be and the same is hereby granted. Further Ordered, that the several defendants be present at a pre-trial conference for the simplification of the issues involved in the consolidated trial, and such other matters as may aid in its disposition, on the 13th day of July, 1943, at 10:00 o'clock A.M.; and it is Further Ordered, that the trial, as provided for in the order of consolidation of the common issues of fact and law, shall be had before the Honorable Louis E. Goodman, United States District Judge, on the 20th day of July, 1943, in accordance with a signed order this day filed.



